

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, *ex rel.*
State Engineer, *et al.*,

Plaintiffs,

v.

EDUARDO ABEYTA, *et al.*, and
CELSO ARELLANO, *et al.*,

Defendants.

69cv07896 BB-ACE
RIO TAOS ADJUDICATION

69cv07939 BB-ACE
RIO HONDO ADJUDICATION

(CONSOLIDATED)

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Report of the Special Master (Doc. No. 2143, filed July 23, 1993) and the Court's Memorandum Opinion and Order (Doc. No. 3102, filed February 21, 2003). The Court has reviewed the Report of the Special Master regarding priority dates and the relevant law. For the reasons set forth below, the Court adopts in part and remands to the Special Master with instructions in part, the undisputed findings and recommendations for priority dates in the Report of the Special Master. The Court also orders the State of New Mexico to serve its proposed priority date on one claimant.

This is the second Memorandum Opinion and Order addressing the findings and recommendations regarding non-Pueblo Defendants' priority dates in the Report of the Special Master (Doc. No. 2143, filed July 23, 1993). In its first Memorandum Opinion and Order (Doc. No. 3102, filed February 21, 2003) addressing this matter, the Court found that more than one Opinion is necessary to fully dispose of the Report of the Special Master.

The Court's first Memorandum Opinion and Order describes in detail the procedural history surrounding the Report of the Special Master. That history shows that the non-Pueblo Defendants were served with individualized Notices of Order to Show Cause why "provisional judgment, subject to *inter se* claims of other parties, should not be entered, declaring their water rights [priority] to be found in the historical studies." The Notice included an offered priority date. The Notice required those objecting to the offered priority date and wanting to offer proof of an earlier date to file a written objection within a 30-day period. After being served, 116 individuals and 45 acequias filed objections to the offered priority dates. Those defendant acequias filing timely objections were then served with a notice of the date of the court hearing on their objections. Most of the individual defendants authorized their acequia associations to represent them. A few individual defendants that did not authorize their acequia association to represent them were not notified of the hearings. In November 1990, the acequias and a few individuals presented evidence at the Special Master's hearings on the objections. After the Special Master filed his report in July 1993, some acequias, but no individual claimants, filed objections to his recommendations.

Defendant acequias have been afforded the opportunity to object to the findings and recommendations regarding priority dates submitted to the Court by the Special Master. Many of the defendant acequias did not file objections to the priority date findings and recommendations in the Special Master's Report (Doc. No. 2143, filed July 23, 1993). The Court adopts the undisputed findings and recommendations for priority dates for the following acequias that objected to the offered priority dates in the Notices of Order to Show Cause but did not object to the Report of the Special Master:

Rio Grande del Rancho Hydrographic Survey Section

Acequia Name	Priority Date
Acequia Abajo la Loma	1760
Acequia de Tio Gerbacio	1760
Acequia del Finado Francisco Martinez	1760
Acequia del Monte	1760
Acequia en Medio	1760
Acequia en Medio los Rios	1760
Acequia Lucero	1760
Acequia Madre del Rio Chiquito	1760
Acequia Madre del Rio Grande	1760
Jaroso Ditch	1760
Ponce de Leon Hot Spring Ditch	1760
Pueblito Ditch	1760
Saucito Ditch	1760
Talpa Reservoir Ditch & Acequia del Monte	1760
Talpa Reservoir Ditch & Acequia Madre del Rio Chiquito	1760

Rio Pueblo de Taos Hydrographic Survey Section

Acequia Name	Priority Date
Acequia de la Plaza	1815
Acequia de los Molinos	1823
Alamitos Ditch [Source: Rio Lucero & Arroyo Seco]	1815
Blas Chavez Ditch	1907
Drake Ditch	1830
El Rito Ditch	1815
Elizardo Pacheco Ditch	1815
Eraclio Martinez Ditch	1815
Espinaso Ditch	1815
Juan C. Marquez Ditch	1815
McClure Ditch	1800
Pacheco Community Ditch	1750
Temporales Ditch	1815
Toribio Martinez Ditch	1815
Torreon Ditch	1815

The adopted acequia priority dates listed above do not apply to those portions of the following subfiles that the Court has previously found to have no water right:

Section	Acequia Name	Subfile	Right Denied In
Grande	Matt Hartt Ditch	2.45.17	Subfile Order, 10/14/77 (1029)
Grande	Matt Hartt Ditch	2.45.24	Subfile Order, 10/14/77 (1029)
Grande	Matt Hartt Ditch	2.45.25	Subfile Order, 10/14/77 (1029)
Grande	Talpa Reservoir Ditch & Acequia del Monte	1.06.25A	Subfile Order, 10/31/77 (1114.004)
Grande	Talpa Reservoir Ditch & Acequia del Monte	1.09.118A	Subfile Order, 10/31/77 (1124.008)
Grande	Talpa Reservoir Ditch & Acequia del Monte	1.09.126A	Default Subfile Order, 11/21/77 (1281)
Grande	Talpa Reservoir Ditch & Acequia del Monte	1.09.127	Default Subfile Order, 11/21/77 (1281)
Grande	Talpa Reservoir Ditch & Acequia del Monte	1.09.128	Default Subfile Order, 11/21/77 (1281)
Grande	Talpa Reservoir Ditch & Acequia Madre del Rio Chiquito	1.09.126	Subfile Order, 3/8/73 (394.016)
Grande	Talpa Reservoir Ditch & Acequia Madre del Rio Chiquito	1.09.130	Subfile Order, 10/26/77 (1088.023)
Grande	Talpa Reservoir Ditch & Acequia Madre del Rio Chiquito	1.09.133	Default Subfile Order, 11/21/77 (1275)
Pueblo	Acequia de la Plaza	1.89A	Default Subfile Order, 4/19/77 (964)

The priority date for those portions of the above listed subfiles having no water right is “None.” The Court will stay ruling on Rio Hondo priorities until the Rio Hondo acequias have had an opportunity to negotiate a water-sharing agreement. (*See* Order Requiring Status Reports, Doc. No. 4384, filed January 28, 2004).

The following three groups of subfiles are remanded to the Special Master for further investigation and action as necessary.

1. Notices of Order to Show Cause were not served for the subfiles listed in this paragraph.

Due process requires all who may be bound or affected by a decree are entitled to notice and hearing.

Reynolds v. Allman, 78 N.M. 1, 3, 427 P.2d 886, 888 (1967).

Section	Acequia Name	Subfile
Grande	Acequia del Finado Francisco Martinez	1.14.1A
Grande	Emilio Chavez Ditch	1.17.17

2. The Consent Orders previously entered for the following subfiles were subsequently vacated on the grounds that they contained clerical errors in ownership:

Section	Acequia Name	Subfile	Subfile Order	Order Vacating
Grande	Acequia del Finado Francisco Martinez	2.40.1	9/13/73 (No. 425.002)	9/28/77 (No. 989)
Grande	Acequia Madre del Rio Grande	1.10.216A	10/12/72 (No. 376.194)	11/16/77 (No. 1225)
Grande	Talpa Reservoir Ditch & Acequia Madre del Rio Chiquito	1.09.53A	9/2/70 (No. 214.402)	10/26/77 (No. 1087)


3. The claimant for Subfile No. 3.67, Acequia de la Plaza, Pueblo Section, objected to the Notice of Order to Show Cause priority date, declined to have his acequia association represent him, but was not served with a notice of the date of the court hearing on his objection. Nor was he served with notice of filing of the Special Master's Report. Consequently, the claimant for Subfile No. 3.67 has not been afforded an opportunity to be heard.

Finally, the Consent Order setting forth the elements of Defendant Nancy Morgas' water rights under Subfile 1.11.149 (Doc. No. 2863, filed December 3, 2001) reserved the priority date for later determination. Plaintiff State of New Mexico shall complete and serve upon Defendant Morgas,

or the appropriate Defendant, its proposed priority date, including a summary of the historical basis for the proposed priority date, by June 30, 2004.

The Court will issue individual subfile orders confirming priorities established by this Memorandum Opinion and Order at a later date.

IT IS SO ORDERED.



BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE